

RESOLUTION NO. 2014237

RE: AUTHORIZING PARTIAL PAYMENTS OF REAL PROPERTY TAXES

Legislators KELSEY, MAC AVERY, SAGLIANO, INCORONATO, and JOHNSON offer the following and move its adoption;

WHEREAS, Chapter 680 of the Laws of 1994, State of New York Real Property Tax Law Section 928-a, authorize the County Legislature of any County by resolution to authorizes the collecting officers of all towns within the County to accept from any taxpayer partial payments for or on account of taxes, special ad valorem levies or special assessments, and

WHEREAS, the New York Board of Real Property Services has previously opined that such a resolution obliges town collecting officers to accept partial payments, and

WHEREAS, pursuant to Real Property Tax Law Section 1502, any Town of the First Class in Dutchess County already has this option the right to exercise the option to collect taxes in installments and the Towns of Hyde Park , Poughkeepsie and Wappinger have exercised that option, and

WHEREAS, the Dutchess County Legislature believes that it would be beneficial to tax payers in all towns to be able to have the option of making partial payments of current taxes, now, therefore, be it

RESOLVED, that the Dutchess County Legislature hereby authorizes, pursuant to Section 928-a of the Real Property Tax Law, tax collectors in all towns in Dutchess County to accept from any taxpayer partial payments, as described herein below, for or on account of current taxes, special ad valorem levies or special assessments, and, be it further

RESOLVED, that partial payment may be made in two (2) monthly installments as follows:

March
May

and, be it further

RESOLVED, that this partial payment program shall not lengthen or extend the towns' warrant, and, be it further

RESOLVED, that this partial payment program shall be effective immediately and shall commence with the levy of the 2016 Town/County taxes subject to further Resolution of the Dutchess County Legislature, and, be it further

RESOLVED, that the Clerk of the Legislature is directed to file a copy of this Resolution with the Commissioner of the New York State Department of Taxation and Finance no later than thirty (30) days after adoption.

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 11th day of August 2014, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 11th day of August 2014.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

MARCUS J. MOLINARO
COUNTY EXECUTIVE




HEIDI SEELBACH
COMMISSIONER

COUNTY OF DUTCHESS
DEPARTMENT OF FINANCE

Memorandum

TO: County Legislators

FROM: Heidi Seelbach 
Commissioner of Finance

DATE: August 5, 2014

RE: Resolution Request for Partial Payment of Real Property Taxes

Carolyn forwarded the attached resolution from Legislator Kelsey and asked that I review it for any adverse impact on the county.

There would be no significant adverse impact to the county. However, the attached opinion from NYS Department of Taxation & Finance legal counsel states that a county resolution pursuant to Real Property Tax Law section 928-a which authorizes partial payments for purposes of all towns in the county is binding upon the tax collecting officers of those towns. "A town would have no authority to refuse to accept any payments offered in accordance with the terms of the program." It is their opinion "that if a county authorizes town tax collecting officers to accept partial or installment payments of taxes, the collecting officers must accept such payments."

I encourage you to talk with municipalities in your district to be aware of their position on this issue before making a decision to move forward with the resolution.

Attachments

cc: Carolyn Morris, Clerk of the Legislature
Val Sommerville, Budget Director

Volume 11 - Opinions of Counsel SBRPS No. 8

Opinions of Counsel index

Taxes (collection)(partial payments) - Real Property Tax Law, §928-a:

A county legislature's resolution adopted pursuant to section 928-a of the Real Property Tax Law, which authorizes partial payments for purposes of "all towns in the county," is binding upon the tax collecting officers of those towns.

We have been asked whether section 928-a of the Real Property Tax Law obliges town tax collecting officers to accept partial payments authorized by a county pursuant thereto. It does.

Section 928-a, as added by chapter 680 of the Laws of 1994, provides that a county legislature "may by resolution authorize the collecting officers in one or more of the classes of municipal corporations described herein to accept from any taxpayer at any time partial payments for or on account of taxes, special ad valorem levies or special assessments in such amount or manner...as may be prescribed by such resolution..." (subd.(1), emphasis added). One of these "classes of municipal corporations" is "all towns within the county" (subd. (2)). Once a county has adopted a partial/installment payment program for the towns in the county pursuant to section 928-a,¹ a collecting officer of such a town would have no authority to *refuse* to accept any payments offered in accordance with the terms of the program. Thus, we believe that if a county "authorizes" town tax collecting officers to accept partial or installment payments of taxes, the collecting officers *must* accept such payments. Thus, despite the statutory use of the term "authorize" rather than "direct," we believe that the statute should be read as *compelling* tax collecting officers to accept such payments when so authorized.

Our conclusion is based on our analysis of the applicable law, not on any stated legislative intent.² For the general rule, as we have stated on a number of occasions, is that partial payments of taxes may not be accepted in the absence of specific authority (see, e.g., 2 Op.Counsel SBEA No. 86; 9 *id.* Nos. 22, 80). Section 928-a enables a county to *supply* such authority to the collecting officers; by doing so, the county effectively *removes the barrier* to the acceptance of partial payments by them. It seems to us that once this barrier has been eliminated, collecting officers in the county no longer have any grounds for declining partial payments.

Indeed, if the Legislature contemplated that each town would have the final say as to whether partial payments would be accepted therein, section 928-a presumably would have vested the decision-making authority directly in the towns; there would have been no reason to give the county a say in the first place. By explicitly empowering the county to make the decision rather than the town, we think the Legislature has rather clearly expressed its intention that the policy should be set by, and applied consistently throughout, the *county*.

Moreover, given that the collecting officer's primary duty is to receive tax payments (RPTL, §§102(5), 904(1), 924; Town Law, §§35, 37), and that a partial payment is a lawful tax payment in a county that has exercised the section 928-a option, a refusal by a collecting officer to accept such a payment could be characterized as an arbitrary and capricious action. In the absence of any statutory language or legislative history on this point, we think collecting officers would have considerable difficulty defending a claim that their acquiescence is required before a taxpayer may participate in a partial payment program duly established by the county pursuant to State law.

Accordingly, in our opinion, a county's resolution pursuant to section 928-a which authorizes partial payments for purposes of "all towns in the county" is binding upon the tax collecting officers of those towns.

May 31, 2001

¹ Installment payments may be seen as a special type of partial payments permitted by section 928-a.

² We examined the Governor's bill jacket for L.1994, c.680, but found nothing in it addressing whether towns or collecting officers have any discretion in this matter.

Updated: January 30, 2013

TOWN OF EAST FISHKILL
330 ROUTE 376
HOPEWELL JUNCTION, NEW YORK 12533
845-221-2160

Claudia D. Heckert
Receiver of Taxes

August 19, 2014

MEMORANDUM

Dear Supervisor Hickman:

Thank you for including me in the information-gathering process on Legislator Kelsey's proposed legislation to authorize partial payments of real property taxes.

Taxes are a significant budget item for our homeowners. And I'm sure you're as concerned as I am about our residents' ability to pay their taxes in a timely manner, not only as the Chief Financial Officer of our great town, but as a concerned taxpayer. We understand the citizens want to meet their civic duties, but struggle during difficult financial times for us all.

I would like to share a few facts regarding East Fishkill's recent tax payment history, and then share my concerns.

Historically, our County & Town Tax collections end on May 31 of each year, with around 90% of taxpayers making payment from January 2-May 31. When my books close, they go to the Dutchess County Commissioner of Finance for completion of the collection, or tax sale after two (2) years of non payment.

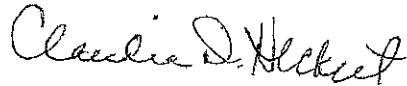
While I think the option of installment payments could be a good option for taxpayers, there are some concerns and considerations to keep in mind:

- Cash flow: The Town relies on the timely payment of taxes to keep the flow of business smooth.
- Staffing: Increasing the number of payments would increase the volume of paperwork in this office, requiring the third "seasonal" tax clerk to be moved to full time status.
- Software updates: Our tax collection software is not currently set to allow for partial and/or multiple payments. New or improved software would be necessary.
- "Fees": The Carmel Central School District currently allows for a two-payment option. However, there is a five (5) per cent fee on each half of those payments. This could mean a significant additional cost for our taxpayers, negating any temporary savings in prolonging the tax cycle. A lower fee could certainly be entertained, but then further cash flow issues could be involved.
- School Districts: I'm unaware of any legislation that would allow for the Dutchess County Legislature to dictate to the school districts how they

conduct their business via a partial payments. Indeed, the Wappingers Central School District recently entertained the possibility of installment payments, and chose not to offer them to residents at this time.

I would look forward to the opportunity to discuss with you and the legislature more detailed plans of how this would go into effect, and hear thoughts on how best to help our taxpayers without disrupting the town's financial strength.

Sincerely,

A handwritten signature in cursive script, reading "Claudia D. Heckert". The signature is written in dark ink and is positioned above the printed name.

Claudia D. Heckert

McKinney's Consolidated Laws of New York Annotated
Real Property Tax Law (Refs & Annos)
Chapter 50-A. Of the Consolidated Laws
Article 9. Levy and Collection of Taxes
Title 3. Collection of Taxes; Return of Collecting Officer (Refs & Annos)

McKinney's RPTL § 928-a

§ 928-a. Partial payment of taxes

Effective: June 22, 2010

Currentness

1. Notwithstanding the provisions of any general or special law to the contrary, the board of supervisors or the county legislature of any county may by resolution authorize the collecting officers in one or more of the classes of municipal corporations described herein to accept from any taxpayer at any time partial payments for or on account of taxes, special ad valorem levies or special assessments in such amount or manner and apply such payments on account thereof in such manner as may be prescribed by such resolution; provided, however, that such resolution shall be adopted prior to the preparation and delivery of the tax rolls to the appropriate collecting officers. A copy of any resolution enacting, amending or repealing any such partial payment program shall be filed with the commissioner no later than thirty days after the adoption thereof.

2. Such resolution shall apply to one or more of the following classes of municipal corporations: (a) all towns within the county; (b) all cities for which the county enforces the collection of delinquent taxes; or (c) all villages for which the county enforces the collection of delinquent taxes. If the resolution does not specify the class or classes of municipal corporations to which it applies, it shall be deemed to apply only to the towns in the county.

3. After any partial payment authorized pursuant to this section has been paid, interest and penalties shall be charged against the unpaid balance only. The acceptance of a partial payment by any official pursuant to this section shall not be deemed to affect any liens and powers of any county conferred in any general or special act, but such rights and powers shall remain in full force and effect to enforce collection of the unpaid balance of such tax or tax liens together with interest, penalties and other lawful charges.

Credits

(Added L.1994, c. 680, § 3. Amended L.1995, c. 154, § 1; L.1997, c. 199, § 2, eff. July 15, 1997; L.2010, c. 56, pt. W, § 1, subd. (b), eff. June 22, 2010.)

Notes of Decisions (1)

McKinney's R. P. T. L. § 928-a, NY RP TAX § 928-a
Current through L.2014, chapters 1 to 90.

McKinney's Consolidated Laws of New York Annotated
Real Property Tax Law (Refs & Annos)
Chapter 50-A. Of the Consolidated Laws
Article 15. Special Provisions Relating to Certain Assessing Units

McKinney's RPTL § 1502

§ 1502. Payment of taxes in installments in certain towns in Dutchess county

Currentness

1. Notwithstanding the provisions of any general or special law, the town board of any town of the first class in the county of Dutchess may by resolution, adopted prior to the levy of taxes pursuant to article nine of this chapter authorize the collecting officer thereof to accept from any taxpayer, so electing, payment for or on account of such taxes in three installments as follows: the first installment on or before the last day of February; the second installment on or before the thirty-first day of May; and the third installment on or before the thirty-first day of August of such year.

2. In the event taxes are authorized to be paid in installments in any town as provided in subdivision one of this section, the following scale of penalties and interest for neglect of payment thereof shall apply in lieu of those provided in section fifteen hundred four of this chapter: if paid, in whole or in part, on or before the last day of February, after the notice required by section nine hundred twenty of this chapter, there shall be no penalty or interest; if paid, in whole or in part, thereafter and on or before the thirty-first day of May, two per centum of the amount of the unpaid balance of the tax; if paid, in whole or in part, thereafter and on or before the thirty-first day of August, four per centum of the amount of the unpaid balance of the tax; if paid thereafter five per centum of the amount of the unpaid balance of the tax and if paid to the county treasurer, after return by the collecting officer of the unpaid taxes which shall be made immediately upon the expiration of the period for the payment of the last installment on the thirty-first day of August, at the rate of interest as determined pursuant to section nine hundred twenty-four-a of this chapter from June first to the date of tax sale with expenses of publication now allowed by law, and the form of notice prescribed by section nine hundred twenty of this chapter shall be made to conform to the provisions of this section by the collecting officer in any such town. The acceptance of a part of such taxes by any such official shall not affect any lien or power of the county of Dutchess to enforce collection of any unpaid balance of tax or tax liens, together with interest, penalties or other lawful charges.

3. Notwithstanding the provisions of any general or special law, the collecting officer in any town wherein taxes are authorized to be paid in installments pursuant to this section shall pay to the officers and persons specified in his warrant, within one week from the last day specified for the payment of any such installment, such proportion of the amount collected by him during such period as the amount of the tax required to be collected and paid to each such officer or person, as the case may be, bears to the total amount of such tax required to be collected and paid to all such officers and persons for all purposes provided, however, that the amount paid to any such officer or person other than the treasurer of the county shall in no event exceed the total of the amount required to be paid to such officer or person as determined by the amount of the total tax levy required to be paid to him. The warrant to the collecting officer shall be varied so as to conform to the provisions of this section.

4. Notwithstanding the provisions of any general or special law, any town wherein taxes are authorized to be paid in installments pursuant to this section shall be liable for and shall pay to the county the full amount of any increased cost to the county for any special accounting system or equipment necessary to comply with the provisions of this section especially applicable with respect to such county.